

Executive Summary – Enforcement Matter – Case No. 45672
S & K ENTERPRISE INC. dba Lake Conroe Food Mart
RN102424553
Docket No. 2012-2520-PWS-E

Order Type:

Findings Agreed Order

Findings Order Justification:

Three or more enforcement actions (NOVs, orders, etc.) over the prior five year period for the same violation(s).

Media:

PWS

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Lake Conroe Food Mart, 12930 Farm-to-Market Road 830, Montgomery County

Type of Operation:

Public water supply

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: March 15, 2013

Comments Received: No

Penalty Information

Total Penalty Assessed: \$696

Amount Deferred for Expedited Settlement: \$0

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$196

Total Due to General Revenue: \$500

Payment Plan: 5 payments of \$100 each

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - High

Site/RN - High

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2011

Executive Summary – Enforcement Matter – Case No. 45672
S & K ENTERPRISE INC. dba Lake Conroe Food Mart
RN102424553
Docket No. 2012-2520-PWS-E

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: October 22, 2012

Date(s) of NOE(s): November 7, 2012

Violation Information

1. Failed to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result on a routine sample [30 TEX. ADMIN. CODE § 290.109(c)(3)(A)(ii)].
2. Failed to collect one raw groundwater source *E. coli* sample from the Facility's well within 24 hours of notification of a distribution total coliform-positive sample [30 TEX. ADMIN. CODE § 290.109(c)(4)(B)].
3. Failed to provide public notification of the failure to collect routine coliform samples [30 TEX. ADMIN. CODE § 290.122(c)(2)(B)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will require Respondent to:

- a. Within 10 days:
 - i. Implement procedures to ensure that all necessary public notifications are provided in a timely manner to persons served by the Facility; and
 - ii. Begin complying with applicable coliform monitoring requirements by collecting all routine, repeat and increased monitoring coliform distribution samples, and one raw groundwater source *E. coli* sample from each groundwater source in use at the time the distribution coliform-positive sample was collected, and by providing water that meets the provisions regarding microbial contaminants. This provision will be satisfied upon six consecutive months of compliant monitoring and reporting at the Facility.
- b. Within 25 days, submit written certification demonstrating compliance with Ordering Provision a.i.; and
- c. Within 195 days, submit written certification demonstrating compliance with Ordering Provision a.ii.

Executive Summary – Enforcement Matter – Case No. 45672
S & K ENTERPRISE INC. dba Lake Conroe Food Mart
RN102424553
Docket No. 2012-2520-PWS-E

Litigation Information

Date Petition(s) Filed: N/A
Date Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A
Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A
TCEQ Enforcement Coordinator: Jim Fisher, Enforcement Division, Enforcement Team 2, MC 169, (512) 239-2537; Debra Barber, Enforcement Division, MC 219, (512) 239-0412
TCEQ SEP Coordinator: N/A
Respondent: Sadruddin Ali, Owner, Lake Conroe Food Mart, 20114 Mansfield Park Lane, Spring, Texas 77379
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES

Assigned PCW

12-Nov-2012
20-Dec-2012

Screening 30-Nov-2012

EPA Due 31-Dec-2012

RESPONDENT/FACILITY INFORMATION

Respondent S & K ENTERPRISE INC. dba Lake Conroe Food Mart
Reg. Ent. Ref. No. RN102424553
Facility/Site Region 12-Houston **Major/Minor Source** Minor

CASE INFORMATION

Enf./Case ID No. 45672 **No. of Violations** 3
Docket No. 2012-2520-PWS-E **Order Type** Findings
Media Program(s) Public Water Supply **Government/Non-Profit** No
Multi-Media **Enf. Coordinator** Jim Fisher
EC's Team Enforcement Team 2

Admin. Penalty \$ Limit Minimum \$50 **Maximum** \$1,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 10.0% Enhancement **Subtotals 2, 3, & 7** \$50

Notes Enhancement for four NOV's with same/similar violations. Adjustment due to high performer classification.

Culpability No 0.0% Enhancement **Subtotal 4** \$0

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5** \$0

Economic Benefit 0.0% Enhancement* **Subtotal 6** \$0

Total EB Amounts \$153
Approx. Cost of Compliance \$290
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7

Final Subtotal \$550

OTHER FACTORS AS JUSTICE MAY REQUIRE

26.5%

Adjustment \$146

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes Recommended enhancement to capture the avoided costs associated with Violation Nos. 1 through 3.

Final Penalty Amount \$696

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$696

DEFERRAL

0.0%

Reduction

Adjustment \$0

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes No deferral is recommended for Findings Orders.

PAYABLE PENALTY

\$696

Screening Date 30-Nov-2012

Docket No. 2012-2520-PWS-E

PCW

Respondent S & K ENTERPRISE INC. dba Lake Conroe Food M

Policy Revision 3 (September 2011)

Case ID No. 45672

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102424553

Media [Statute] Public Water Supply

Enf. Coordinator Jim Fisher

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	4	20%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgments or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 20%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance
History
Notes

Enhancement for four NOVs with same/similar violations. Adjustment due to high performer classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 10%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 10%

Screening Date 30-Nov-2012

Docket No. 2012-2520-PWS-E

PCW

Respondent S & K ENTERPRISE INC. dba Lake Conroe Food Mart

Policy Revision 3 (September 2011)

Case ID No. 45672

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102424553

Media [Statute] Public Water Supply

Enf. Coordinator Jim Fisher

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 290.109(c)(3)(A)(ii)

Violation Description

Failed to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result on a routine sample collected during the month of July 2012.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Major	Moderate	Minor
Actual			
Potential	x		

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Failure to perform repeat coliform monitoring could result in persons served by the Facility being exposed to contaminants which would exceed levels protective of human health.

Adjustment \$850

\$150

Violation Events

Number of Violation Events 1

31 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$150

One monthly event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$150

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$100

Violation Final Penalty Total \$209

This violation Final Assessed Penalty (adjusted for limits) \$209

Economic Benefit Worksheet

Respondent S & K ENTERPRISE INC. dba Lake Conroe Food Mart

Case ID No. 45672

Reg. Ent. Reference No. RN102424553

Media Public Water Supply

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$100	21-Jul-2012	22-Jul-2012	0.00	\$0	\$100	\$100
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided cost includes the estimated amount to collect a total of four repeat samples (\$25 per sample), calculated for the 24-hour period following the coliform-positive sample result.

Approx. Cost of Compliance

\$100

TOTAL

\$100

Screening Date 30-Nov-2012

Docket No. 2012-2520-PWS-E

PCW

Respondent S & K ENTERPRISE INC. dba Lake Conroe Food Mart

Policy Revision 3 (September 2011)

Case ID No. 45672

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102424553

Media [Statute] Public Water Supply

Enf. Coordinator Jim Fisher

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 290.109(c)(4)(B)

Violation Description Failed to collect one raw groundwater source Escherichia coli sample from the Facility's well within 24 hours of notification of a distribution total coliform-positive sample collected during the month of July 2012.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Failure to collect all triggered source monitoring samples could result in persons served by the Facility being exposed to contaminants, including Escherichia coli, which would exceed levels protective of human health.

Adjustment \$850

\$150

Violation Events

Number of Violation Events 1

31 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$150

One monthly event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$150

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$25

Violation Final Penalty Total \$209

This violation Final Assessed Penalty (adjusted for limits) \$209

Economic Benefit Worksheet

Respondent S & K ENTERPRISE INC. dba Lake Conroe Food Mart

Case ID No. 45672

Reg. Ent. Reference No. RN102424553

Media Public Water Supply

Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$25	21-Jul-2012	22-Jul-2012	0.00	\$0	\$25	\$25
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided cost includes the estimated amount to conduct triggered source monitoring of the drinking water (\$25 per sample), calculated for the 24-hour period following the coliform-positive sample result.

Approx. Cost of Compliance

\$25

TOTAL

\$25

Screening Date 30-Nov-2012

Docket No. 2012-2520-PWS-E

PCW

Respondent S & K ENTERPRISE INC. dba Lake Conroe Food Mart

Policy Revision 3 (September 2011)

Case ID No. 45672

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102424553

Media [Statute] Public Water Supply

Enf. Coordinator Jim Fisher

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 290.122(c)(2)(B)

Violation Description Failed to provide public notification of the failure to collect routine coliform samples during the months of July, August, October, and November 2011.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	X		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$950

\$50

Violation Events

Number of Violation Events 4

84 Number of violation days

mark only one
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$200

Four single events are recommended, one for each missed notification.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Extraordinary

Before NOV NOV to EDPRP/Settlement Offer

Ordinary

N/A

X (mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$200

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$28

Violation Final Penalty Total \$278

This violation Final Assessed Penalty (adjusted for limits) \$278

Economic Benefit Worksheet

Respondent S & K ENTERPRISE INC. dba Lake Conroe Food Mart

Case ID No. 45672

Reg. Ent. Reference No. RN102424553

Media Public Water Supply

Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
Item Description No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$45	22-Oct-2012	31-Aug-2013	0.86	\$2	n/a	\$2
Remediation/Disposal	\$100	22-Oct-2012	31-Aug-2013	0.86	\$4	n/a	\$4
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The delayed costs include the estimated amount to update the Facility's operational guidance and conduct employee training to ensure that all necessary public notifications are provided in a timely manner, calculated from the record review date to the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$20	1-Aug-2011	28-Feb-2012	1.50	\$1	\$20	\$21
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided cost includes the estimated amount (\$5 per notice X 4 notices) to provide public notice to the persons served by the Facility of the failure to complete routine coliform monitoring, calculated for the period during which the notices were due.

Approx. Cost of Compliance

\$165

TOTAL

\$28

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



TCEQ Compliance History Report

PUBLISHED Compliance History Report for CN602680225, RN102424553, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

Customer, Respondent, or Owner/Operator: CN602680225, S & K Enterprise, Inc. **Classification:** HIGH **Rating:** 0.00

Regulated Entity: RN102424553, LAKE CONROE FOOD MART **Classification:** HIGH **Rating:** 0.00

Complexity Points: 3 **Repeat Violator:** N/A

CH Group: 14 - Other

Location: 12930 FARM-TO-MARKET ROAD 830, MONTGOMERY COUNTY, TEXAS

TCEQ Region: REGION 12 - HOUSTON

ID Number(s):

PUBLIC WATER SYSTEM/SUPPLY REGISTRATION
1700706

PETROLEUM STORAGE TANK REGISTRATION
REGISTRATION 75278

Compliance History Period: September 01, 2007 to August 31, 2012 **Rating Year:** 2012 **Rating Date:** 09/01/2012

Date Compliance History Report Prepared: January 04, 2013

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: December 31, 2007 to December 31, 2012

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Jim Fisher **Phone:** (512) 239-2537

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If YES for #2, who is the current owner/operator? N/A
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If YES, when did the change(s) in owner or operator occur? N/A

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees: N/A

B. Criminal convictions: N/A

C. Chronic excessive emissions events: N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

Item 1 May 22, 2012 (1002922)

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

1 Date: 01/25/2012 (1042362) CN602680225
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)
30 TAC Chapter 290, SubChapter F 290.122(f)

Description: AUG 2011 TCR Routine Monitoring PN Posting and Reporting Violation - Failure to submit a signed certificate of delivery to the Executive Director certifying that public notice was issued pursuant to 30 Tex. Admin. Code §290.122 during the time period that public notice was required for failing to conduct coliform monitoring for the month of 08/2011.

- 2** **Date: 03/15/2012 (1042362)** **CN602680225**
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)
30 TAC Chapter 290, SubChapter F 290.122(f)
Description: OCT 2011 TCR Routine Monitoring PN Posting and Reporting Violation - Failure to submit a signed certificate of delivery to the Executive Director certifying that public notice was issued pursuant to 30 Tex. Admin. Code §290.122 during the time period that public notice was required for failing to conduct coliform monitoring for the month of 10/2011.
- 3** **Date: 04/24/2012 (1042362)** **CN602680225**
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)
30 TAC Chapter 290, SubChapter F 290.122(f)
Description: NOV 2011 TCR Routine Monitoring PN Posting and Reporting Violation - Failure to submit a signed certificate of delivery to the Executive Director certifying that public notice was issued pursuant to 30 Tex. Admin. Code §290.122 during the time period that public notice was required for failing to conduct coliform monitoring for the month of 11/2011.
- 4** **Date: 10/11/2012 (1042362)** **CN602680225**
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(3)(A)(ii)
Description: TCR Repeat Monitoring Violation 07/2012 - Failure to collect all repeats following a coliform found result.

F. Environmental audits: N/A

G. Type of environmental management systems (EMSs): N/A

H. Voluntary on-site compliance assessment dates: N/A

I. Participation in a voluntary pollution reduction program: N/A

J. Early compliance: N/A

Sites Outside of Texas: N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
S & K ENTERPRISE INC.
DBA LAKE CONROE FOOD MART
RN102424553**

**§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2012-2520-PWS-E

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding S & K ENTERPRISE INC. dba Lake Conroe Food Mart ("the Respondent") under the authority of TEX HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

The Respondent understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The Respondent owns and operates a public water supply at 12930 Farm-to-Market Road 830 in Montgomery County, Texas ("the Facility") that has one service connection and serves at least 25 people per day for at least 60 days per year.

2. During a record review conducted on October 22, 2012, TCEQ staff documented that the Respondent did not collect a set of repeat distribution coliform samples during the month of July 2012.
3. During a record review conducted on October 22, 2012, TCEQ staff documented that the Respondent did not collect one raw groundwater source *Escherichia coli* sample from the Facility's well during the month of July 2012.
4. During a record review conducted on October 22, 2012, TCEQ staff documented that the Respondent did not provide public notification of the failure to collect routine coliform samples during the months of July, August, October, and November 2011.
5. The Respondent received notice of the violations on November 12, 2012.

II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 2, the Respondent failed to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result on a routine sample, in violation of 30 TEX. ADMIN. CODE § 290.109(c)(3)(A)(ii).
3. As evidenced by Findings of Fact No. 3 the Respondent failed to collect one raw groundwater source *Escherichia coli* sample from the Facility's well within 24 hours of notification of a distribution total coliform-positive sample, in violation of 30 TEX. ADMIN. CODE § 290.109(c)(4)(B).
4. As evidenced by Findings of Fact No. 4, the Respondent failed to provide public notification of the failure to collect routine coliform samples, in violation of 30 TEX. ADMIN. CODE § 290.122(c)(2)(B).
5. Pursuant to TEXAS HEALTH AND SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health & Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of Six Hundred Ninety-Six Dollars (\$696) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049(b). The Respondent has paid One Hundred Ninety-Six Dollars (\$196) of the administrative penalty. The remaining amount of Five Hundred Dollars (\$500) of the administrative penalty shall be payable in

five monthly payments of One Hundred Dollars (\$100) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed an administrative penalty in the amount of Six Hundred Ninety-Six Dollars (\$696), as set forth in Section II, Paragraph 6 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: S & K ENTERPRISE INC. dba Lake Conroe Food Mart, Docket No. 2012-2520-PWS-E" to:

Financial Administration Division, Revenue Operations Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The Respondent shall undertake the following technical requirements:
 - a. Within 10 days after the effective date of this Agreed Order:
 - i. Implement procedures to ensure that all necessary public notifications are provided in a timely manner to persons served by the Facility, in accordance with 30 TEX. ADMIN. CODE § 290.122; and
 - ii. Begin complying with applicable coliform monitoring requirements by collecting all routine, repeat and increased monitoring coliform distribution samples, and one raw groundwater source *Escherichia coli* sample from each groundwater source in use at the time the distribution coliform-positive sample was collected, and by providing water that meets

the provisions regarding microbial contaminants, in accordance with 30 TEX. ADMIN. CODE § 290.109. This provision will be satisfied upon six consecutive months of compliant monitoring and reporting at the Facility.

- b. Within 25 days after the effective date of this Agreed Order, submit written certification as described in Ordering Provision No. 2.c. below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a.i.; and
- c. Within 195 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a.ii. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Public Drinking Water Section Manager
Water Supply Division, MC 155
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- 3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
- 4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the

Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

5. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
6. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
7. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
9. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Pamela Davis
For the Executive Director

Date

3/29/13

I, the undersigned, have read and understand the attached Agreed Order in the matter of S & K ENTERPRISE INC. dba Lake Conroe Food Mart. I am authorized to agree to the attached Agreed Order on behalf of S & K ENTERPRISE INC. dba Lake Conroe Food Mart, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, S & K ENTERPRISE INC. dba Lake Conroe Food Mart waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Sada Linn
Signature

2-5-13
Date

SADA LINN
Name (Printed or typed)
Authorized Representative of
S & K ENTERPRISE INC. dba Lake Conroe Food Mart

owner
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section III, Paragraph 1 of this Agreed Order.